IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE S.SIRI JAGAN

WEDNESDAY, THE 17TH OCTOBER 2007 / 25TH ASWINA 1929

WP(C).No. 26688 of 2006(B)

PETITIONER:

MOHANAN A.V.,
UPSA (MALAYALAM), A.U.P.SCHOOL,
PALLATHADKA, P.O.PALLATHADKA,
KASARGOD DISTRICT.

BY ADV. SRI.KALEESWARAM RAJ

RESPONDENTS:
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1. **THE MANAGER,**
   A.U.P.SCHOOL, PALLATHADKA,
   P.O.PALLATHADKA, KASARGOD DIST.

2. **SMT. SANTHAKUMARI,**
   ASSISTANT TEACHER, A.U.P.SCHOOL,
   PALLATHADKA, P.O.PALLATHADKA,
   KASARGOD DISTRICT.

3. **STATE OF KERALA, REPRESENTED BY**
   SECRETARY TO GOVERNMENT,
   DEPARTMENT OF GENERAL EDUCATION,
   SECRETARIAT, THIRUVANANTHAPURAM.

4. **THE DISTRICT EDUCATIONAL OFFICER,**
   KASARGOD.

BY ADV. SRI.P.SHRIHARI for R1
SMT.P.VANI
SRI.V.A.AJAI KUMAR for R2
BY SR.GOVERNMENT PLEADER SMT.REMANI T.B for R3 & R4

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 10/10/2007, THE COURT ON 17/10/2007 DELIVERED THE FOLLOWING:

KSS

APPENDIX

PETITIONER'S EXHIBITS:

EXT.P1: COPY OF THE SENIORITY LIST OF TEACHERS IN AUP SCHOOL, PALLATHADKA.

EXT.P2: COPY OF THE REPRESENTATION DTD. 23/04/2005 FILED BY THE PETITIONER BEFORE THE MANAGER AS WELL AS BEFORE THE AEO TOGETHER WITH POSTAL RECEIPT AND ACKNOWLEDGEMENT CARD.

EXT.P3: COPY OF THE CERTIFICATE DTD. 12/05/2004.

EXT.P4: COPY OF THE JUDGMENT DTD. 17/05/2005 IN WP(C) NO.14562/2005.

EXT.P5: COPY OF THE ORDER DTD. 27/06/2005.

EXT.P6: COPY OF THE APPEAL DTD. 16/07/2005 FILED BY THE PETITIONER BEFORE THE 4TH RESPONDENT.

EXT.P7: COPY OF THE JUDGMENT DTD. 25/07/2005 IN WP(C) NO.22021/2005.

EXT.P8: COPY OF THE ORDER DTD. 7/11/2005 ISSUED BY THE 4TH RESPONDENT.

EXT.P9: COPY OF THE REVISION FILED BY THE PETITIONER BEFORE THE 3RD RESPONDENT DTD. 21/11/2005.

EXT.P10: COPY OF THE JUDGMENT DTD. 29/11/2005 IN WP(C) NO.33257/2005.

EXT.P11: COPY OF G.O.(RT) NO.2284/06/G.EDN. DTD. 3/06/2006.

1ST RESPONDENT'S EXHIBITS:

EXT.R1: COPY OF REF.NO.B2/22081/76 ISSUED BY R4 DTD. 16/10/1976.

EXT.R1(2): COPY OF LETTER NO.A2-18558/78 DTD. 25/07/78 ISSUED BY AEO.

EXT.R1(3): COPY OF G.O.NO.207/78 GAD DTD. 6/05/1978 BY R3.

EXT.R1(4): COPY OF CIRCULAR OF R3 DTD. 5/05/1982.

EXT.R1(5): COPY OF LETTER OF R1 DTD. 30/04/2005.

EXT.R1(6): COPY OF AUPS, PALLATHADKA TEACHERS ATTENDANCE REGISTER OF M AY 2005.

2ND RESPONDENT'S EXHIBITS:

EXT.R2A: COPY OF THE POST GRADUATE DEGREE CERTIFICATE IN MASTER OF ARTS (EXTERNAL) IN POLITICAL SCIENCE AWARDED BY THE UNIVERSITY OF KARNATAK TO THE 2ND RESPONDENT.

EXT.R2B: COPY OF THE M ARK LIST FOR MASTER OF ARTS (EXTERNAL) IN POLITICAL SCIENCE AWARDED BY THE UNIVERSITY OF KARNATAK TO THE 2ND RESPONDENT.

EXT.R2C: COPY OF THE PROVISIONAL CERTIFICATE AWARDING B.ED DEGREE EXAMINATIONS BY THE UNIVERSITY OF MYSORE TO THE 2ND RESPONDENT.

EXT.R2D: COPY OF THE MARK LIST DTD. 16/06/1975 ISSUED TO THE 2ND RESPONDENT BY THE MYSORE UNIVERSITY FOR THE B.ED DEGREE EXAMINATIONS CONDUCTED BY THE MYSORE UNIVERSITY.

/TRUE COPY/

P.A.TO JUDGE

KSS

S. SIRI JAGAN, J.

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W.P(C) No. 26688 of 2006

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Dated this, the October, 2007.

J U D G M E N T

The A.U.P. School, Pallathadka in Kasargod District is a Kannada linguistic minority school. The petitioner is UPSA of that school who joined service of the school on 20.10.1993. He holds the qualifications of B.A., B.Ed. and pass in Account Test (Lower), which according to the petitioner are sufficient qualifications for promotion to the post of Headmaster of the school, under Rules 44 and 44A of Chapter XIVA of Kerala Education Rules.

2. On 30.4.2005, the then headmaster of the school Sri. Seetharama Bhat was to retire from service, as a result of which the post of headmaster would fall vacant on 1.5.2005. According to the petitioner on the retirement of the headmaster, since the petitioner would be the only U.P.S.A available in the school possessing the prescribed qualifications for appointment as headmaster, as on the date of occurrence of the vacancy on 1.5.2005, the petitioner filed Ext.P2 representation dated 23.4.2005 before the Manager as well as the A.E.O seeking promotion as headmaster of the school on retirement of Sri.

Seetharama Bhat. However, the manager of the school, the 1st respondent herein, did not promote the petitioner to that post on 1.5.2005. The A.E.O. also did not pass any orders on the representation filed by the petitioner. In W.P.(C) No. 14562/05 filed by the petitioner, by Ext.P4 judgment dated 17.5.2005, this Court directed the A.E.O. to dispose of Ext.P2, with due regard to all binding and relevant judicial precedents including the decisions to be cited by the petitioner and other decisions that may be cited by respondents 1 and 2 herein.

3. In the meantime, the 1st respondent Manager appointed his sister, the 2nd respondent herein as headmistress of the school on 28.5.2005, which was the date on which she completed 50 years, thus becoming eligible for exemption from test qualification and qualified for the post of headmaster.

4. On 27.6.2005, the A.E.O. passed Ext.P5 order holding that as on 1.5.05 the petitioner was not qualified for the post of headmaster, he not possessing 12 years of service as on 1.5.05 which according to the A.E.O is mandatory as per Rule 45 of Chapter XIVA, KER and not being a Kannada test qualified teacher, which is a must as per G.O.(MS)No.207/78 dated 6.5.78

as the school is situated in a bilingual area of Malayalam and Kannada speaking people. It was also held therein that the 2nd respondent herein is eligible to be promoted as Headmistress on 28.5.2005.

5. Against Ext.P5 order, the petitioner filed Ext.P6 appeal before the DEO, the 4th respondent herein, and pursuant to Ext.P7 judgment in W.P.(C) No.22021 of 2005, the 4th respondent passed Ext.P5 order dated 7.11.05, holding that the petitioner's claim is not maintainable. The petitioner filed Ext.P9 revision petition before the 3rd respondent, Government of Kerala who, pursuant to Ext.P10 judgment of this Court, passed Ext.P11 order rejecting the petitioner's revision petition holding that the petitioner is not qualified for the post of headmaster as he is not conversant with Kannada language, accepting the contention of respondent 1 and 2 that as per G.O.(MS)No.207/78 dated 6.5.1978 knowledge of Kannada language is a must, for promotion to the post of headmaster in primary schools in areas where the predominant language is Kannada. The petitioner challenges Exts.P5, P8 and P11 orders and seeks a direction to the 1st respondent to promote and appoint the petitioner as the

headmaster of the school with effect from 2.6.2005.

6. The petitioner contends that 12 years service and knowledge in Kannada language are not qualifications prescribed by the KER for the post of headmaster and therefore he being in possession of all qualifications prescribed under the KER, for promotion as headmaster as on 1.5.2005, the date of occurrence of vacancy, and the 2nd respondent having acquired qualification by completing 50 years only on 28.5.2005, the petitioner ought to have been appointed as headmaster instead of the 2nd respondent. He argues that the G.O. relied on by the respondents relate to promotion of Primary Department Teachers in Departmental Primary School as headmasters and has no application to promotion as headmasters of aided private schools. He further argues that even in a minority school, the Manager can appoint person of his choice only if that person is qualified as on the date of occurance of the vacancy. When admittedly as on the date of occurance of vacancy, the 2nd respondent did not possess the requisite qualifications as per KER, the petitioner, possessing all the qualifications prescribed in the KER, had a right to be appointed to the post of headmaster is the contention raised by

the petitioner.

7. The respondents 1 and 2 reiterate the contentions accepted by the original, appellate and revisional authorities. According to them since the school is a linguistic minority school, the manager had the right to appoint a person of his choice as headmaster. As on the date of occurrence of vacancy no teacher in the school was qualified. On 28.5.05 the 2nd respondent became qualified and therefore she was appointed as headmistress. The petitioner did not have 12 years' service as on 1.5.2005. Further as per G.O.(MS)No.207/78, knowledge of Kannada language was an essential qualification for promotion to the post of headmaster and according to them the G.O. is applicable both to government and aided schools equally.

8. I have considered the rival contentions in detail.

9. In view of the three Full Bench decisions of this Court in **James Thomas and others V. The Chief Justice High Court of Kerala and others [1977 KLT 622 (F.B.)], Varghese and others V. State of Kerala and others [1981 KLT 458(FB)]** and **Padmanabhan Nair V. Dy. Director [1991(1)KLT 337(FB)]** the law is well settled to the effect that when qualifications are

prescribed for a promotion post, eligibility for appointment to that post has to be reckoned with reference to the date on which the vacancy arose. This is further clear from the Note to Rule 45 of Chapter XIVA of KER. So also in view of the decision in **The Manger, S.S. Higher Secondary School V. Lijin G.S. [2007(3) KHC 381]**, although the manager of a minority school has the right to appoint a person of his choice as headmaster, the person chosen by him should be qualified as per the KER, failing which the manager is bound to appoint the qualified senior-most teacher as headmaster. It is also held in the decision of **Neema Rajan V. Jyothi Chandran [2001(3)KLT SN 25 - Case No.35)** that the Manager cannot postpone filling up the vacancy until a teacher of his choice gets qualified for promotion when a claimant is awaiting appointment as on the date of occurrence of vacancy, which legal position appears to me also as the correct one.

10. In this case, admittedly as on the date of occurrence of the vacancy namely 1.5.2005, the 2nd respondent was not qualified to hold the post of headmaster since she did not possess qualification of pass in Account Test (Lower) as stipulated in Rule

45B (1) of Chapter XIVA of KER, and she obtained exemption from that qualification by virtue of Rule 45B (4) only on 28.5.2005. Therefore the only question to be decided in this case is as to whether the petitioner was qualified to hold the post of headmaster as on 1.5.2005.

11. The qualifications for the post of headmaster in a U.P. School are prescribed in Rules 45 and 45B of Chapter XIVA of KER which read thus.

> "[45. Subject to Rule 44, when the post of Headmaster of complete U.P. School is vacant or when an incomplete U.P. School becomes a complete U.P. School, the post shall be filled up from among the qualified teachers on the staff of the School or Schools under the Educational Agency. If there is a Graduate teacher with B.Ed or other Requivalent qualification and who has got at least five years experience in teaching [69][after acquisition of B.Ed. Degree] he may be appointed as Headmaster provided he has got a service equal to half of the period of service of the seniormost under-graduate teacher. If graduate teachers with the aforesaid qualification and service are not available in the School or Schools under the same Educational Agency, the seniormost Primary School Teacher with S.S.L.C, or

equivalent and [70][T.T.C. issued by the Board of Public Examination, Kerala or T.C.H. issued by the Karnataka Secondary Education Examination Board, Bangalore or a pass in Pre-degree Examination with Pedagogy as an elective subject conducted by the University of Kerala or any other equivalent training qualification prescribed for appointment as Primary School Assistant] may be appointed."

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[45B. (1) Notwithstanding anything contained in Rules 45 and 45A, Account Test (Lower)conducted by the Kerala Public Service Commission shall be an obligatory qualification to the teachers for promotion as Headmaster of Lower Primary and Upper Primary Schools.

(2) Every person who is holding the post of headmaster in a Lower Primary School or an Upper Primary School on the date of these rules shall stand exempted from acquiring the qualifications specified in sub-rule(1).

(3) in the case of teachers awaiting promotion as Headmaster [76][under Rule 45 and 45A as the case may be] there shall be temporary exemption to them from acquiring the qualification specified in sub-rule(1) [77][till 31st day of March 1988].

[(4) Teachers who have attained the age of 50 years shall stand exempted permanently from acquiring the qualification specified in sub-rule(1)].

> (5) During the period of exemption allowed under sub rule (3) promotions to the posts of Headmasters shall be made without insisting on the qualifications specified in sub-rule(1) and those who fail to acquire the said qualification within the said period of exemption shall be reverted]."

The petitioner admittedly possesses the educational qualifications prescribed under the Rule. From Ext.P3 it is clear that the petitioner passed Account Test (Lower) in December 2003. Since both the petitioner and the 2nd respondent are graduate teachers with B.Ed with 5 years experience in teaching and no undergraduate teacher is involved, the experience qualification of half the service of the senior-most under graduate teacher is not relevant. Although for promotion as High School Headmaster 12 years of continuous graduate service is prescribed as a qualification in Rule 44A, such 12 years of experience is not prescribed in Rule 45, which rule prescribes the qualifications for promotion as U.P. School Headmasters. Therefore there cannot be any doubt that the petitioner possessed all the qualifications prescribed in the KER for promotion as Headmaster of the school

as on the date of occurrence of the vacancy namely 1.5.2005.

12. Now the only other question is as to whether knowledge in Kannada language is an essential qualification for promotion to an aided school run by a linguistic minority of Kannada speaking people. There is no Government order issued under the KER, making knowledge of Kannada as a necessary qualification for appointment as headmaster in such aided minority schools. The contention of the respondents is that the school has 7 Kannada Medium Classes and 7 Malayalam Medium Classes. They would submit that a good deal of the correspondence of the school is in Kannada. Therefore without good knowledge of Kannada, the Headmaster of the school cannot effectively run the school, which would affect the standard of education of the school. Since the very object of KER is betterment of standards of education in schools, in such schools knowledge of Kannada should be compulsory for headmaster of the school. They would submit that although in G.O.(MS)207/78 it is not specifically mentioned that it applies to aided schools, in so far as it does not state to the contrary it must be taken to be applicable to aided schools also failing which it would amount to discrimination.

13. On the other hand the petitioner would contend that qualifications for promotion as headmaster in aided schools are governed by the KER and notifications and Government orders issued under the KER, which do not prescribe any qualification of knowledge of the language of the minority who runs the school or of the linguistic minority area and therefore the petitioner cannot be denied promotion for want of a qualification which is not prescribed under rules.

14. Being a school run by a Kannada speaking minority in an area where the predominant language is Kannada, and the school is having 7 Kannada Medium Classes and 7 Malayalam Medium Classes, ideally the Headmaster should be a person conversant with both languages, especially since he would have to deal with correspondence in both languages and English. But the question is, whether without any such prescription in the rules applicable, the Educational authorities and this Court can hold that it is a necessary qualification for a headmaster of such schools. I think not. When the field is covered by rules, without a specification in the Rules, the Educational authorities and this Court cannot hold that such a language qualification is a

necessary qualification, on the ground that such qualification would be ideal for the well being of the school. It is not as if the headmaster cannot function at all without knowledge of Kannada. Only thing is that at times he may have to seek assistance of others who know the language. Therefore in the absence of Rules prescribing such a qualification as essential, such a qualification cannot be held to be compulsory.

15. The next question is whether G.O.(MS)207/78 dated 6.5.1978 (Ext.R1(3)) applies to the situation. The G.O. was issued by the General Administration Department of Government of Kerala and not by the General Education Department, which is the department generally dealing with matters relating to Kerala Education Rules. The operative portion of the G.O. is Clause 3.1 which reads thus:

> "3.1. After examining the question in detail, Govt. accept the recommendation of the Director of Public Instruction and direct that the provisions of the G.O.(MS).No.506/62/Pd . dt. 3-10-62 be made applicable in the case of primary school Headmasters also in the areas where the predominant language is Tamil or Kannada and order accordingly."

The same speaks only about primary school headmasters. It

does not specify whether it applies to both government and aided schools or Government schools only. However, the subject at the top of the G.O. reads thus:

> "National integration-Linguistic Minorities-safeguards-promotion of P.D. Teachers as Heads of Departmental Primary Schools in Linquistic Minority areas-Orders issued."
>
> **(underlining supplied)**

In the first and 2nd paragraphs of the body of the G.O. refers to "Headmasters of Education Department", "Heads of Departmental High Schools", "P.D. Teachers", "Seniority in the Revenue District" etc. which makes it abundantly clear that the same is intended for Departmental Primary Schools and not aided Schools. As such I am not satisfied that based on Ext.R1(3) G.O., the qualification of knowledge of Kannada can be held to be an essential qualification for promotion to the post of headmaster in an aided school run by a Kannada linguistic minority in a Kannada speaking linguistic minority area and therefore the petitioner could not have been denied promotion for want of that qualification.

16. Therefore Exts.P5, P8 and P11 are quashed. It is

declared that as on the date of occurrence of vacancy of headmaster in the AUP School Pallathadka, ie. on 1.5.2005, the petitioner was fully qualified for promotion to the vacancy of headmaster and that the 2nd respondent was not qualified on that date. Consequently the 1st respondent Manger is directed to pass fresh orders in the matter in accordance with the findings in this judgment and forward the same for approval of the A.E.O. within a period of one month from the date of receipt of a copy of this judgment.

The writ petition is disposed of as above.

S. SIRI JAGAN, JUDGE

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S. SIRI JAGAN, JUDGE.

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